

US EPA ARCHIVE DOCUMENT

RCRA REVISION CHECKLIST 224

Withdrawal of the Emission Comparable Fuel Exclusion

75 FR 33712-33724

June 15, 2010

(RCRA Cluster XX, Non-HSWA)

Name of State: _____

State Statutory Authority: _____

Title of Regulations: _____ Effective Date: _____

Date Checklist Completed: _____

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
PART 261 IDENTIFICATION AND LISTING OF HAZARDOUS WASTE						
Revise to read as follows: Comparable fuels or comparable syngas fuels that meet the requirements of § 261.38.	261.4(a)(16)					
Revise section and title as follows: Exclusion of comparable fuel and syngas fuel.	261.38 title					
<i>Specifications for excluded fuels.</i> Materials that meet the specifications for comparable fuel or syngas fuel under paragraphs (a)(1) or(a)(2) of this section, respectively, and the other requirements of this section, are not solid wastes.	261.38(a)					
<i>Comparable fuel specifications</i>	261.38(a)(1)					
<i>Physical specifications</i>	261.38(a)(1)(i)					
<i>Heating value.</i> The heating value must exceed 5,000 BTU/lbs. (11,500 J/g).	261.38(a)(1)(i)(A)					
<i>Viscosity.</i> The viscosity must not exceed: 50 cS, as-fired.	261.38(a)(1)(i)(B)					
<i>Constituent specifications.</i> For compounds listed in Table 1 to this section, the specification levels and, where non-detect is the specification, minimum required detection limits are: (see Table 1 of this section).	261.38(a)(1)(ii)					

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<i>Synthesis gas fuel specifications.</i> — Synthesis gas fuel (i.e., syngas fuel) that is generated from hazardous waste must:	261.38(a)(2)					
Have a minimum Btu value of 100 Btu/Scf;	261.38(a)(2)(i)					
Contain less than 1 ppmv of total halogen;	261.38(a)(2)(ii)					
Contain less than 300 ppmv of total nitrogen other than diatomic nitrogen (N ₂);	261.38(a)(2)(iii)					
Contain less than 200 ppmv of hydrogen sulfide; and	261.38(a)(2)(iv)					
Contain less than 1 ppmv of each hazardous constituent in the target list of appendix VIII constituents of this part.	261.38(a)(2)(v)					
<i>Blending to meet the specifications</i>	261.38(a)(3)					
Hazardous waste shall not be blended to meet the comparable fuel specification under paragraph (a)(1) of this section, except as provided by paragraph (a)(3)(ii) of this section:	261.38(a)(3)(i)					
<i>Blending to meet the viscosity specification.</i> A hazardous waste blended to meet the viscosity specification for comparable fuel shall:	261.38(a)(3)(ii)					
As generated and prior to any blending, manipulation, or processing, meet the constituent and heating value specifications of paragraphs (a)(1)(i)(A) and (a)(1)(ii) of this section;	261.38(a)(3)(ii)(A)					
Be blended at a facility that is subject to the applicable requirements of parts 264, 265, or 267 or §262.34 of this chapter; and	261.38(a)(3)(ii)(B)					
Not violate the dilution prohibition of paragraph (a)(6) of this section.	261.38(a)(3)(ii)(C)					
<i>Treatment to meet the comparable fuel specifications.</i>	261.38(a)(4)					

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A hazardous waste may be treated to meet the specifications for comparable fuel set forth in paragraph (a)(1) of this section provided the treatment:	261.38(a)(4)(i)					
Destroys or removes the constituents listed in the specification or raises the heating value by removing or destroying hazardous constituents or materials;	261.38(a)(4)(i)(A)					
Is performed at a facility that is subject to the applicable requirements of parts 264, 265, or 267, or §262.34 of this chapter; and	261.38(a)(4)(i)(B)					
Does not violate the dilution prohibition of paragraph (a)(6) of this section.	261.38(a)(4)(i)(C)					
Residuals resulting from the treatment of a hazardous waste listed in subpart D of this part to generate a comparable fuel remain a hazardous waste.	261.38(a)(4)(ii)					
<i>Generation of a syngas fuel.</i>	261.38(a)(5)					
A syngas fuel can be generated from the processing of hazardous wastes to meet the exclusion specifications of paragraph (a)(2) of this section provided the processing:	261.38(a)(5)(i)					
Destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying constituents or materials;	261.38(a)(5)(i)(A)					
Is performed at a facility that is subject to the applicable requirements of parts 264 and 265, or 267, or §262.34 of this chapter or is an exempt recycling unit pursuant to §261.6(c); and	261.38(a)(5)(i)(B)					

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Does not violate the dilution prohibition of paragraph (a)(6) of this section.	261.38(a)(5)(i)(C)					
Residuals resulting from the treatment of a hazardous waste listed in subpart D of this part to generate a syngas fuel remain a hazardous waste.	261.38(a)(5)(ii)					
<i>Dilution prohibition.</i> No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a hazardous waste to meet the specifications of paragraphs (a)(1)(i)(A) or (a)(1)(ii) of this section for comparable fuel or paragraph (a)(2) of this section for syngas.	261.38(a)(6)					
<i>Implementation</i>	261.38(b)					
<i>General.</i>	261.38(b)(1)					
Materials that meet the specifications provided by paragraph (a) of this section for comparable fuel or syngas fuel are excluded from the definition of solid waste provided that the conditions under this section are met. For purposes of this section, such materials are called excluded fuel; the person claiming and qualifying for the exclusion is called the excluded fuel generator and the person burning the excluded fuel is called the excluded fuel burner.	261.38(b)(1)(i)					
The person who generates the excluded fuel must claim the exclusion by complying with the conditions of this section and keeping records necessary to document compliance with those conditions.	261.38(b)(1)(ii)					
<i>Notices</i>	261.38(b)(2)					

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<i>Notices to State RCRA and CAA Directors in authorized states or regional RCRA and CAA Directors in unauthorized States.</i>	261.38(b)(2)(i)					
1 The generator must submit a one-time notice, except as provided by paragraph (b)(2)(i)(C) of this section, to the Regional or State RCRA and CAA Directors, in whose jurisdiction the exclusion is being claimed and where the excluded fuel will be burned, certifying compliance with the conditions of the exclusion and providing the following documentation:	261.38(b)(2)(i)(A)					
The name, address, and RCRA ID number of the person/facility claiming the exclusion;	261.38(b)(2)(i)(A)(1)					
The applicable EPA Hazardous Waste Codes that would otherwise apply to the excluded fuel;	261.38(b)(2)(i)(A)(2)					
The name and address of the units meeting the requirements of paragraphs (b)(3) and (c) of this section, that will burn the excluded fuel;	261.38(b)(2)(i)(A)(3)					
An estimate of the average and maximum monthly and annual quantity of material for which an exclusion would be claimed, except as provided by paragraph (b)(2)(i)(C) of this section; and	261.38(b)(2)(i)(A)(4)					
The following statement, which shall be signed and submitted by the person claiming the exclusion or his authorized representative: STATEMENT	261.38(b)(2)(i)(A)(5)					
If there is a substantive change in the information provided in the notice required under this paragraph, the generator must submit a revised notification.	261.38(b)(2)(i)(B)					

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Excluded fuel generators must include an estimate of the average and maximum monthly and annual quantity of material for which an exclusion would be claimed only in notices submitted after December 19, 2008 for newly excluded fuel or for revised notices as required by paragraph (b)(2)(i)(B) of this section.	261.38(b)(2)(i)(C)					
<i>Public notice.</i> Prior to burning an excluded fuel, the burner must publish in a major newspaper of general circulation local to the site where the fuel will be burned, a notice entitled "Notification of Burning a Fuel Excluded Under the Resource Conservation and Recovery Act" and containing the following information:	261.38(b)(2)(ii)					
Name, address, and RCRA ID number of the generating facility(ies);	261.38(b)(2)(ii)(A)					
Name and address of the burner and identification of the unit(s) that will burn the excluded fuel;	261.38(b)(2)(ii)(B)					
A brief, general description of the manufacturing, treatment, or other process generating the excluded fuel;	261.38(b)(2)(ii)(C)					
An estimate of the average and maximum monthly and annual quantity of the excluded fuel to be burned; and	261.38(b)(2)(ii)(D)					
Name and mailing address of the Regional or State Directors to whom the generator submitted a claim for the exclusion.	261.38(b)(2)(ii)(E)					
<i>Burning.</i> The exclusion applies only if the fuel is burned in the following units that also shall be subject to Federal/State/local air emission requirements, including all applicable requirements implementing section 112 of the Clean Air Act:	261.38(b)(3)					

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Industrial furnaces as defined in §260.10 of this chapter;	261.38(b)(3)(i)					
Boilers, as defined in §260.10 of this chapter, that are further defined as follows:	261.38(b)(3)(ii)					
Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or	261.38(b)(3)(ii)(A)					
Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;	261.38(b)(3)(ii)(B)					
Hazardous waste incinerators subject to regulation under subpart O of parts 264 or 265 of this chapter or applicable CAA MACT standards.	261.38(b)(3)(iii)					
Gas turbines used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.	261.38(b)(3)(iv)					
<i>Fuel analysis plan for generators.</i> The generator of an excluded fuel shall develop and follow a written fuel analysis plan which describes the procedures for sampling and analysis of the material to be excluded. The plan shall be followed and retained at the site of the generator claiming the exclusion.	261.38(b)(4)					
At a minimum, the plan must specify:	261.38(b)(4)(i)					
The parameters for which each excluded fuel will be analyzed and the rationale for the selection of those parameters;	261.38(b)(4)(i)(A)					
The test methods which will be used to test for these parameters;	261.38(b)(4)(i)(B)					

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The sampling method which will be used to obtain a representative sample of the excluded fuel to be analyzed;	261.38(b)(4)(i)(C)					
The frequency with which the initial analysis of the excluded fuel will be reviewed or repeated to ensure that the analysis is accurate and up to date; and	261.38(b)(4)(i)(D)					
If process knowledge is used in the determination, any information prepared by the generator in making such determination.	261.38(b)(4)(i)(E)					
For each analysis, the generator shall document the following:	261.38(b)(4)(ii)					
The dates and times that samples were obtained, and the dates the samples were analyzed;	261.38(b)(4)(ii)(A)					
The names and qualifications of the person(s) who obtained the samples;	261.38(b)(4)(ii)(B)					
A description of the temporal and spatial locations of the samples;	261.38(b)(4)(ii)(C)					
The name and address of the laboratory facility at which analyses of the samples were performed;	261.38(b)(4)(ii)(D)					
A description of the analytical methods used, including any clean-up and sample preparation methods;	261.38(b)(4)(ii)(E)					
All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and the description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;	261.38(b)(4)(ii)(F)					
All laboratory results demonstrating whether the exclusion specifications have been met; and	261.38(b)(4)(ii)(G)					

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All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in paragraph (b)(9) of this section and also provides for the availability of the documentation to the claimant upon request.	261.38(b)(4)(ii)(H)					
Syngas fuel generators shall submit for approval, prior to performing sampling, analysis, or any management of an excluded syngas fuel, a fuel analysis plan containing the elements of paragraph (b)(4)(i) of this section to the appropriate regulatory authority. The approval of fuel analysis plans must be stated in writing and received by the facility prior to sampling and analysis to demonstrate the exclusion of a syngas. The approval of the fuel analysis plan may contain such provisions and conditions as the regulatory authority deems appropriate.	261.38(b)(4)(iii)					
<i>Excluded fuel sampling and analysis.</i>	261.38(b)(5)					

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<i>General.</i> For wastes for which an exclusion is claimed under the specifications provided by paragraphs (a)(1) or (a)(2) of this section, the generator of the material must test for all the constituents in appendix VIII to this part, except those that the generator determines, based on testing or knowledge, should not be present in the fuel. The generator is required to document the basis of each determination that a constituent with an applicable specification should not be present. The generator may not determine that any of the following categories of constituents with a specification in Table 1 to this section should not be present:	261.38(b)(5)(i)					
A constituent that triggered the toxicity characteristic for the constituents that were the basis for listing the hazardous secondary material as a hazardous waste, or constituents for which there is a treatment standard for the waste code in 40 CFR 268.40;	261.38(b)(5)(i)(A)					
A constituent detected in previous analysis of the material;	261.38(b)(5)(i)(B)					
Constituents introduced into the process that generates the material; or Constituents that are byproducts or side reactions to the process that generates the material.	261.38(b)(5)(i)(C)					
Constituents that are byproducts or side reactions to the process that generates the material.	261.38(b)(5)(i)(D)					

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Any claim under this section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a generator from liability should that constituent later be found in the excluded fuel above the exclusion specifications.	Note to paragraph (b)(5)					
<i>Use of process knowledge.</i> For each waste for which the comparable fuel or syngas exclusion is claimed where the generator of the excluded fuel is not the original generator of the hazardous waste, the generator of the excluded fuel may not use process knowledge pursuant to paragraph (b)(5)(i) of this section and must test to determine that all of the constituent specifications of paragraphs (a)(1) and (a)(2) of this section, as applicable, have been met.	261.38(b)(5)(ii)					
The excluded fuel generator may use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the sampling and analysis are unbiased, precise, and representative of the excluded fuel. For the fuel to be eligible for exclusion, a generator must demonstrate that:	261.38(b)(5)(iii)					
The 95% upper confidence limit of the mean concentration for each constituent of concern is not above the specification level; and	261.38(b)(5)(iii)(A)					
The analyses could have detected the presence of the constituent at or below the specification level.	261.38(b)(5)(iii)(B)					

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Nothing in this paragraph preempts, overrides or otherwise negates the provision in §262.11 of this chapter, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.	261.38(b)(5)(iv)					
In an enforcement action, the burden of proof to establish conformance with the exclusion specification shall be on the generator claiming the exclusion.	261.38(b)(5)(v)					
The generator must conduct sampling and analysis in accordance with the fuel analysis plan developed under paragraph (b)(4) of this section.	261.38(b)(5)(vi)					
<u>Viscosity condition for comparable fuel.</u>	261.38(b)(5)(vii)					
Excluded comparable fuel that has not been blended to meet the kinematic viscosity specification shall be analyzed as-generated.	261.38(b)(5)(vii)(A)					
If hazardous waste is blended to meet the kinematic viscosity specification for comparable fuel, the generator shall:	261.38(b)(5)(vii)(B)					
Analyze the hazardous waste as-generated to ensure that it meets the constituent and heating value specifications of paragraph (a)(1) of this section; and	261.38(b)(5)(vii)(B) (1)					
After blending, analyze the fuel again to ensure that the blended fuel meets all comparable fuel specifications.	261.38(b)(5)(vii)(B) (2)					
Excluded fuel must be re-tested, at a minimum, annually and must be retested after a process change that could change its chemical or physical properties in a manner than may affect conformance with the specifications.	261.38(b)(5)(viii)					
Reserved	261.38(b)(6)					

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<i>Speculative accumulation.</i> Excluded fuel must not be accumulated speculatively, as defined in §261.1(c)(8).	261.38(b)(7)					
<i>Operating record.</i> The generator must maintain an operating record on site containing the following information:	261.38(b)(8)					
All information required to be submitted to the implementing authority as part of the notification of the claim:	261.38(b)(8)(i)					
The owner/operator name, address, and RCRA ID number of the person claiming the exclusion;	261.38(b)(8)(i)(A)					
For each excluded fuel, the EPA Hazardous Waste Codes that would be applicable if the material were discarded; and	261.38(b)(8)(i)(B)					
The certification signed by the person claiming the exclusion or his authorized representative.	261.38(b)(8)(i)(C)					
A brief description of the process that generated the excluded fuel. If the comparable fuel generator is not the generator of the original hazardous waste, provide a brief description of the process that generated the hazardous waste;	261.38(b)(8)(ii)					
The monthly and annual quantities of each fuel claimed to be excluded;	261.38(b)(8)(iii)					
Documentation for any claim that a constituent is not present in the excluded fuel as required under paragraph (b)(5)(i) of this section;	261.38(b)(8)(iv)					
The results of all analyses and all detection limits achieved as required under paragraph (b)(4) of this section;	261.38(b)(8)(v)					
If the comparable fuel was generated through treatment or blending, documentation of compliance with the applicable provisions of paragraphs (a)(3) and (a)(4) of this section;	261.38(b)(8)(vi)					

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If the excluded fuel is to be shipped off-site, a certification from the burner as required under paragraph (b)(10) of this section;	261.38(b)(8)(vii)					
The fuel analysis plan and documentation of all sampling and analysis results as required by paragraph (b)(4) of this section; and	261.38(b)(8)(viii)					
If the generator ships excluded fuel off-site for burning, the generator must retain for each shipment the following information on-site:	261.38(b)(8)(ix)					
The name and address of the facility receiving the excluded fuel for burning;	261.38(b)(8)(ix)(A)					
The quantity of excluded fuel shipped and delivered;	261.38(b)(8)(ix)(B)					
The date of shipment or delivery;	261.38(b)(8)(ix)(C)					
A cross-reference to the record of excluded fuel analysis or other information used to make the determination that the excluded fuel meets the specifications as required under paragraph (b)(4) of this section; and	261.38(b)(8)(ix)(D)					
A one-time certification by the burner as required under paragraph (b)(10) of this section.	261.38(b)(8)(ix)(E)					
<i>Records retention.</i> Records must be maintained for a period of three years.	261.38(b)(9)					
<i>Burner certification to the generator.</i> Prior to submitting a notification to the State and Regional Directors, a generator of excluded fuel who intends to ship the excluded fuel off-site for burning must obtain a one-time written, signed statement from the burner:	261.38(b)(10)					
Certifying that the excluded fuel will only be burned in an industrial furnace, industrial boiler, utility boiler, or hazardous waste incinerator, as required under paragraph (b)(3) of this section;	261.38(b)(10)(i)					

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Identifying the name and address of the facility that will burn the excluded fuel; and	261.38(b)(10)(ii)					
Certifying that the State in which the burner is located is authorized to exclude wastes as excluded fuel under the provisions of this section.	261.38(b)(10)(iii)					
<i>Ineligible waste codes.</i> Wastes that are listed as hazardous waste because of the presence of dioxins or furans, as set out in appendix VII of this part, are not eligible for these exclusions, and any fuel produced from or otherwise containing these wastes remains a hazardous waste subject to full RCRA hazardous waste management requirements.	261.38(b)(11)					
<i>Regulatory status of boiler residues.</i> Burning excluded fuel that was otherwise a hazardous waste listed under §§261.31 through 261.33 does not subject boiler residues, including bottom ash and emission control residues, to regulation as derived-from hazardous wastes.	261.38(b)(12)					
<i>Residues in containers and tank systems upon cessation of operations.</i>	261.38(b)(13)					
Liquid and accumulated solid residues that remain in a container or tank system for more than 90 days after the container or tank system ceases to be operated for storage or transport of excluded fuel product are subject to regulation under parts 262 through 265, 267, 268, 270, 271, and 124 of this chapter.	261.38(b)(13)(i)					

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Liquid and accumulated solid residues that are removed from a container or tank system after the container or tank system ceases to be operated for storage or transport of excluded fuel product are solid wastes subject to regulation as hazardous waste if the waste exhibits a characteristic of hazardous waste under §§261.21 through 261.24 or if the fuel were otherwise a hazardous waste listed under §§261.31 through 261.33 when the exclusion was claimed.	261.38(b)(13)(ii)					
Liquid and accumulated solid residues that are removed from a container or tank system and which do not meet the specifications for exclusion under paragraphs (a)(1) or (a)(2) of this section are solid wastes subject to regulation as hazardous waste if:	261.38(b)(13)(iii)					
The waste exhibits a characteristic of hazardous waste under §§261.21 through 261.24; or	261.38(b)(13)(iii)(A)					
The fuel were otherwise a hazardous waste listed under §§261.31 through 261.33. The hazardous waste code for the listed waste applies to these liquid and accumulated solid residues.	261.38(b)(13)(iii)(B)					

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<i>Waiver of RCRA Closure Requirements.</i> Interim status and permitted storage and combustion units, and generator storage units exempt from the permit requirements under §262.34 of this chapter, are not subject to the closure requirements of 40 CFR Parts 264, 265, and 267 provided that the storage and combustion unit has been used to manage only hazardous waste that is subsequently excluded under the conditions of this section, and that afterward will be used only to manage fuel excluded under this section.	261.38(b)(14)					
<i>Spills and leaks.</i>	261.38(b)(15)					
Excluded fuel that is spilled or leaked and that therefore no longer meets the conditions of the exclusion is discarded and must be managed as a hazardous waste if it exhibits a characteristic of hazardous waste under §§261.21 through 261.24 or if the fuel were otherwise a hazardous waste listed in §§261.31 through 261.33.	261.38(b)(15)(i)					
For excluded fuel that would have otherwise been a hazardous waste listed in §§261.31 through 261.33 and which is spilled or leaked, the hazardous waste code for the listed waste applies to the spilled or leaked material.	261.38(b)(15)(ii)					
Nothing in this section preempts, overrides, or otherwise negates the provisions in CERCLA Section 103, which establish reporting obligations for releases of hazardous substances, or the Department of Transportation requirements for hazardous materials in 49 CFR parts 171 through 180.	261.38(b)(16)					

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			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
<i>Failure to comply with the conditions of the exclusion.</i> An excluded fuel loses its exclusion if any person managing the fuel fails to comply with the conditions of the exclusion under this section, and the material must be managed as hazardous waste from the point of generation. In such situations, EPA or an authorized state agency may take enforcement action under RCRA section 3008(a).	261.38(c)					

¹ All five subprovisions of 261.38(b)(2)(i)(A) should have an italicized end citation, which does not appear in the FRN. Also, 261.38(b)(2)(i)(A) is considered to be more stringent than the June 19, 1998 rule.